

JOSEPH P. RUSSONIELLO (CSBN 44332)  
 United States Attorney  
 THOMAS MOORE (ASBN 4305-O78T)  
 Assistant United States Attorney  
 Chief, Tax Division  
 DAVID L. DENIER (California State Bar No. 95024)  
 Assistant United States Attorney  
 9th Floor Federal Building  
 450 Golden Gate Avenue, Box 36055  
 San Francisco, California 94102  
 Telephone: (415) 436-6888  
 Fax: (415) 436-6748

Attorneys for the United States of America

**UNITED STATES DISTRICT COURT FOR THE  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**JESUS MARQUEZ, OLGA MARQUEZ, RAMON  
 MARQUEZ, JUANITA MARQUEZ, TAQUERIA  
 LOS PRIMOS, TAQUERIA LOS PRIMOS NO. 2,  
 LUIS GALINDO, MARTHA GALINDO, BANK  
 OF AMERICA, N.A., STATE OF CALIFORNIA  
 FRANCHISE TAX BOARD, STATE OF  
 CALIFORNIA EMPLOYMENT DEVELOPMENT  
 DEPARTMENT, STATE OF CALIFORNIA  
 BOARD OF EQUALIZATION, STATE OF  
 CALIFORNIA DEPARTMENT OF LABOR,  
 SAN MATEO COUNTY TAX COLLECTOR,**

**Defendants.**

**No. C-08-0891-MEJ**

**JOINT CASE MANAGEMENT  
 STATEMENT**

**DATE: AUGUST 28, 2008  
 TIME: 10:00 A.M.**

The parties to the above-entitled action jointly submit this Case Management Statement.

**DESCRIPTION OF CASE**

1. A brief description of the events underlying the action:

This is an action to reduce to judgment certain tax assessments made against defendants Jesus and Olga Marquez, Ramon and Juanita Marquez, Taqueria Los Primos, and Taqueria Los Primos No. 2; and to foreclose certain federal tax liens against the real property located at 791 South Johnston Street, Half Moon Bay, California 94019.

///

1 Jesus and Ramon Marquez are brothers and partners in Taqueria Los Primos, 85 North B  
2 Street, San Mateo, California 94401, and Taqueria Los Primos No. 2, 376 N. Ellsworth Avenue,  
3 San Mateo , California 94401. Both partnerships have outstanding employment tax liabilities.  
4 Also, both partnerships continue to accrue FICA and withholding tax liabilities(Form 941) and  
5 federal unemployment tax liabilities (Form 940). They are also delinquent in filing some of their  
6 Employer's Quarterly Federal Tax Returns (Form 941), Employer's Annual Federal  
7 Unemployment Tax Returns (Forms 940), and U.S. Return of Partnership Income (Form 1065).

8 Jesus and Olga Marquez and Ramon and Juanita Marquez have outstanding federal  
9 income tax liabilities. Both couples file their federal income tax returns jointly.

10 Notices of Federal Tax Liens have been filed for the tax periods as set forth in the  
11 complaint. Additionally, Defendants Employment Development Department, Franchise Tax  
12 Board, and State Board of Equalization have recorded tax liens against the subject real property.

13 The real property that is the subject of the foreclosure action , 791 South Johnston Street,  
14 Half Moon Bay, California 94019, is the residence of Jesus and Olga Marquez as well as the  
15 residence of Ramon and Juanita Marquez. Jesus and Olga hold a forty-five percent interest in the  
16 residence as joint tenants with each other. Ramon and Juanita Marquez hold a forty-five percent  
17 interest in the residence as joint tenants with each other. The remaining ten percent is allegedly  
18 held by Luis and Martha Galindo as joint tenants with each other. The couples' 45%, 45% and  
19 10% interests are held as tenants in common. The Galindos do not reside at the foreclosure  
20 property, nor do they owe any federal taxes.

21 2. The principal factual issues which the parties dispute:

22 Defendants Jesus and Olga Marquez, Ramon and Juanita Marquez, Taqueria Los Primos,  
23 and Taqueria Los Primos No. 2 do not contest the tax liabilities. They are attempting to obtain a  
24 home equity line of credit secured by the real property to pay off the tax debts. They filed loan  
25 applications with Wells Fargo and Bank of America who are still evaluating them. At the  
26 suggestion of Bank of America, a second loan application was submitted because the Bank felt  
27 that Ramon and Juanita Marquez applying as primary borrowers may have a better chance at loan  
28 approval. Additionally, the Marquezes intend to file loan applications with other lenders

1 including Indymac, Wachovia and First Horizon. Because the Marquezes do not speak fluent  
2 English, their counsel has referred them to a mortgage broker who is proficient in Spanish. This  
3 broker is willing to assist the Marquezes and believes that there is sufficient equity in the home  
4 to obtain a loan. If the Marquezes are unable to secure a loan, they would then wish to try to sell  
5 the home themselves because they are likely to receive more from a private sale than a  
6 foreclosure. The creditors are willing to allow them a reasonable time to sell the property.

7 The only real issue is the priority of lien holders with respect to the property. It is  
8 anticipated that the lien holders will be able to agree to their respective priorities.

9 The Galindos have been served but have not answered. The parties are informed that the  
10 Galindos were on title solely to assist the Marquez couples in obtaining financing and do not  
11 claim an interest in the property. The government will attempt to secure a disclaimer from the  
12 Galindos. If it is unable to do so, it will take their default.

13 3. The principal legal issue[s] which the parties dispute:

14 None.

15 4. The other factual issues [*e.g. service of process, personal jurisdiction, subject*  
16 *matter jurisdiction or venue*] which remain unresolved for the reason stated below and how the  
17 parties propose to resolve those issues:

18 None.

19 5. The parties which have not been served and the reasons:

20 Bank of America. N.A. Bank of America is the holder of the first deed of trust on the  
21 foreclosure property. All parties agree that Bank of America had priority over all lien holders  
22 except San Mateo County for any unpaid real property taxes. Service was attempted by notice  
23 and acknowledgment but failed.

24 Similarly, service was attempted by notice and acknowledgment on California State  
25 Department of Labor but failed.

26 6. The additional parties which the below-specified parties intend to join and the  
27 intended time frame for such joinder?

28 Bank of America. N.A. and California State Department of Labor.

7. The following parties consent to assignment of this case to a United States Magistrate Judge for *[court or jury]* trial:

The parties consent to assignment to a magistrate judge for trial.

#### **ALTERNATIVE DISPUTE RESOLUTION**

8. *[Please indicate the appropriate response(s).]*

The case was automatically assigned to Nonbinding Arbitration at filing and will be ready or the hearing by (date) \_\_\_\_\_.

The parties have filed a Stipulation and Proposed Order Selecting an ADR process (specify process): \_\_\_\_\_.

The parties filed a Notice of Need to ADR Phone Conference and the phone conference was held on or is scheduled for \_\_\_\_\_.

X The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request [or a party separately requests] is None.

The parties believe that they can reach a settlement. If they encounter some difficulties, the parties would request a settlement conference with a Magistrate Judge.

9. Please indicate any other information regarding ADR process or deadline:

None.

#### **DISCLOSURES**

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computation and insurance agreements]*:

The government will provide documentation of its assessments, copies of notices of federal tax liens, calculations of balances due, and any other pertinent information in its possession that is requested by the defendants. Defendants Employment Development Department, Franchise Tax Board, and State Board of Equalization agree to provide documentation supporting their respective claims, including copies of notices of state tax liens, certificates of delinquencies, and other pertinent information within its possession, upon request by other parties.

#### **DISCOVERY**

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery*

1 *from experts; deadlines for completing discovery]:*

2 At this time, the parties anticipate that all discovery can be handled informally.

3 **TRIAL SCHEDULE**

4 12. The parties request a trial date as follows:

5 None at this time.

6 13. The parties expect that the trial will last for the following number of days:

7 Not applicable at this time.

8 **RELATED CASES**

9 None.

10  
11 JOSEPH P. RUSSONIELLO  
12 United States Attorney

13 Dated: August 26, 2008

14 /s/ David L. Denier  
15 DAVID L. DENIER  
16 Assistant United States Attorney  
17 Tax Division  
18 Attorneys for United States of America

19 Dated: August 26, 2008

20 /s/Cindy L. Ho  
21 CINDY L. HO  
22 Attorney for Defendants Jesus Marquez,  
23 Olga Marquez, Ramon Marquez, Juanita  
24 Marquez, Luis Galindo, Martha Galindo,  
25 Taqueria Los Primos and Taqueria Los  
26 Primos No. 2

27 MICHAEL MURPHY  
28 County Counsel

Dated: August 26, 2008

/s/ Eugene Whitlock  
EUGENE WHITLOCK  
Deputy County Counsel  
Attorney for County of San Mateo Tax  
Collector

EDMUND G. BROWN JR.  
Attorney General of the State of California

Dated: August 26, 2008

/s/ Karen W. Yiu  
KAREN W. YIU  
Deputy Attorney General  
Attorneys for Defendants Franchise Tax  
Board, Employment Development  
Department, and State Board of Equalization

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this order. In addition the Court orders:

Dated:

UNITED STATES MAGISTRATE JUDGE